SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 805

JOHN CAPETOLA, JR., A MINOR, BY HIS NEXT FRIEND, JOHN CAPETOLA, SR., AND JOHN CAPETOLA, SR., AND MARGARET CAPETOLA, PARENTS OF THE MINOR, IN THEIR OWN RIGHT,

Petitioners,

vs.

BARCLAY WHITE COMPANY.

PETITION FOR CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

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To the Honorable Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The undersigned, on behalf of the above named petitioners, prays that a writ of Certiorari be issued to review the judgment of the United States Circuit Court of Appeals for the Third Circuit entered December 22, 1943, affirming the decision of the District Court of the United States for the Eastern District of Pennsylvania.

Opinions Below.

The opinion of the District Court is reported in 48 F. Supp. 797 (R. 12). The opinion of the Circuit Court of Appeals is reported in 139 Fed. 2nd, 558 (R. 67).

Jurisdiction.

Jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

Question Presented.

1. Does an Act of Congress, empowering the Workmen's Compensation authorities in the several states to apply their respective compensation laws to Federal lands within their exterior boundaries, bring such land within the purview of a compensation act applicable exclusively to accidents within the state?

Statutes Involved.

1. The Pennsylvania Workmen's Compensation Act of 1915, P. L. 738, Article 1, Section 101, as amended; 1929 P. L. 829, Section 1; 1929 P. L. 853, Section 1; 137 P. L. 1552, Section 1; 1939 P. L. 520, Section 1; the pertinent provision of which is, "This Act * * * shall apply to all accidents occurring within this Commonwealth, irrespective of the place where the contract of hiring was made, renewed or extended, and shall not apply to any accident occurring outside of the Commonwealth * * *"

2. The Act of Congress of June 25, 1936, 49 Stat. 1938; 40 U. S. C. Section 290; the pertinent provision of which is, "Whatsoever constituted authority of each of the several states is charged with the enforcement of and requiring compliances with the State Workmen's Compensation laws of the said states * * * shall have the power and au-

thority to apply such laws to all lands and premises owned or held by the United States of America by deed or act of cession, by purchase or otherwise, which is within the exterior boundaries of any state * * * in the same way, and to the same extent as if said premises were under the exclusive jurisdiction of the state within whose exterior boundaries such place may be.

"For the purposes set out in this section, the United States of America hereby vests in the several states within whose exterior boundaries such place may be, insofar as the enforcement of State Workmen's Compensation laws are affected, the right, power, and authority aforesaid."

Statement.

The land comprising the League Island Navy Yard was ceded to the United States by Act of the Pennsylvania Legislature in 1863 (R. 3), and supplemental Act in 1866 (R. 4), and accepted by Act of Congress approved February 18, 1867 (R. 7). The Pennsylvania Workmen's Compensation Act was passed in 1915, and is applicable to all accidents occurring within the Commonwealth. The Act of Congress of June 25, 1936, empowered the Workmen's Compensation authorities of the several states to apply the provisions of the respective workmen's compensation laws to Federal lands within the exterior boundaries of the State as if they were under its exclusive jurisdiction (R. 11). Pennsylvania has taken no legislative action pursuant to the Act of Congress.

The petitioners brought a civil action in trespass for personal injuries to the minor petitioner sustained in an accident on December 16, 1941, in League Island Navy Yard, while employed as a bricklayer's laborer by John B. Kelly, Inc., a sub-contractor (R. 22). The respondent, defendant below, was the general contractor. The alleged cause of in-

jury was the negligent act of an employee of the respondent. After the accident, Kelly's general compensation insurance carrier entered into a voluntary agreement with the minor, describing the locus of the accident as Philadelphia, Pennsylvania, and paid compensation in the sum of Six hundred thirty dollars (R. 43 and 45).

The factual issues were determined by the jury in favor of the petitioners and verdicts rendered for the minor in the sum of $6000., and for the parents in the sum of $1500. The respondent had reserved a question of law as to whether the Pennsylvania Workmen's Compensation Act applied to the League Island Navy Yard, and barred this common law action by the petitioners (R. 43). The District Court resolved this question favorably to the respondent and entered judgment for the respondent *Non Obstante Veredicto*.

On appeal from this judgment to the Circuit Court of Appeals, the respondent contended:

(a) That Congress, by the Act of June 25, 1936, adopted the Pennsylvania Workmen's Compensation Act as the law of the League Island Navy Yard;

(b) That irrespective of the effect of the Act of Congress of June 25, 1936, the minor petitioner was a Pennsylvania employee within the provisions of Section 1 of the Compensation Act, extending its application "to Pennsylvania employees whose duties require them to go temporarily beyond the territorial limits of the Commonwealth not over 90 days."

The petitioners contended:

(a) That the Act of 1936 did not adopt local compensation acts as federal law;

(b) That the Act of 1936 authorized the states to legislate on this subject with respect to federal lands and that such

state legislation is a prerequisite to the establishment of this jurisdiction.

(c) That the extra territorial provision of the Pennsylvania Workmen's Compensation Act did not apply.

The Circuit Court of Appeals rejected both of the contentions of the respondent and rejected contention (b) of the petitioners, and held:

(a) That Congress did not adopt the Pennsylvania Compensation Act; (R. 70)

(b) That the Court was not required to decide and did not decide the application of the Pennsylvania Workmen's Compensation Act to the minor petitioner in respect of employment outside the Commonwealth under Section 1 of the Act; (R. 72)

(c) That no action of the Pennsylvania Legislature pursuant to the Act of June 25, 1936, was necessary to effectuate its Workmen's Compensation Act in League Island Navy Yard. (R. 71)

(d) That the removal of the impediment of Federal jurisdiction in the League Island Navy Yard by the Act of June 25, 1936, gave effect to the Pennsylvania Compensation Act in that territory because of the intent of the Pennsylvania Legislature that the Act be effective as to all against whom it could be applied. (R. 71)

On this reasoning the judgment of the District Court was affirmed.

Specification of Errors.

The Circuit Court of Appeals erred:

1. In finding and holding that the Act of Congress of June 25, 1936, caused the Pennsylvania Workmen's Com-

pensation Act to become operative in the League Island Navy Yard.

2. In finding and holding that the provisions of the Pennsylvania Workmen's Compensation Act by which it applies to all accidents within the Commonwealth embrace an accident occurring in the League Island Navy Yard.

Reasons for Granting the Writ.

1. The Circuit Court of Appeals has decided an important question of federal law which has not been, but should be settled by this Court, when it held that the Act of Congress of 1936 constituted the League Island Navy Yard land within the Commonwealth of Pennsylvania without legislative action by the Commonwealth.

Nature of the Case.

Summary

Point A. The existing Workmen's Compensation law of Pennsylvania does not apply to the League Island Navy Yard.

Point B. The Act of Congress of 1936 does not alter the application of express limitations of the Pennsylvania Compensation Act with respect to the League Island Navy Yard.

POINT A.

The existing Workmen's Compensation law of Pennsylvania does not apply to the League Island Navy Yard. The purview of the Pennsylvania Workmen's Compensation Act is clearly stated in Section 1 as enacted in 1915 and unamended since: "This Act shall apply to all accidents occurring within this Commonwealth * * * and shall not apply to any accident occurring outside of the Commonwealth."

The fact that the League Island Navy Yard is not "within this Commonwealth" is well established. *Fort Leavenworth R. R. Co.* v. *Lowe*, 114 U. S. 525, 29 L. Ed. 264, 5 S. Ct. 993 (1885); *United States* v. *Unzeuta*, 381 U. S. 138, 50 S. Ct. 284; *Standard Oil Company* v. *California*, 291 U. S. 242, 54 S. Ct. 381.

The inapplicability of the Workmen's Compensation Act to the League Island Navy Yard has been settled law in Pennsylvania under the decision of the Court of Common Pleas in Luzerne County in *Haggerty* v. *O'Brien*, 21 Luz. 7, 68 Pitts. 349, 2 Erie 47. There is no appellate court decision.

POINT B.

The Act of Congress of 1936 does not alter the application of express limitations of the Pennsylvania Compensation Act with respect to the League Island Navy Yard. The Act of Congress of 1936 authorizes "whatsoever constituted authority of each of the several states is charged with the enforcement of and requiring compliance with the State Workmen's Compensation laws of said states * * * to apply such laws to all lands and premises owned or held by the United States of America by deed or act of cession by purchase or otherwise which is within the exterior boundaries of any state." Argument is unnecessary to show that the constituted authority addressed in this act is charged with the functions described by virtue of the state law and not of federal law. The Pennsylvania Act charges such authorities with enforcement of the law, so far as is pertinent here, as to accidents occurring within the Commonwealth and not to accidents occurring outside the Commonwealth.

Federal land may come to be embraced by the provisions of this Act in one of two ways:

(1) By change in this section of the Act;

(2) By change in status of the land from that of land "outside of this Commonwealth" to that of land "within this Commonwealth."

(1) It is clear that the Act has not been changed by the Pennsylvania legislature. Section 1 of the Act was re-enacted in the amendment of 1939 in the language of the Act of 1915 quoted under Point A above. It cannot be changed by Act of Congress, which exercises its own powers only, and not those of other independent sovereignties. The Compensation Act speaks for itself, therefore, exclusively as to accidents occurring within the Commonwealth.

(2) The Act of Congress of 1936 does not bring the League Island Navy Yard "within the Commonwealth of Pennsylvania". It does not purport to do so, and it is submitted that it would fail for want of Congressional power if it did. In form and substance, it is simply a grant of power to local authorities as expressed in the second paragraph of the Act: "For the purposes set out in this section, the United States of America hereby vests in the several states within whose exterior boundaries such places may be, insofar as the enforcement of Workmen's Compensation laws are affected, the right, power and authority aforesaid." Until this power has been exercised by the agency to which it has been granted, it is power only and not law, in common with any other power inherent in sovereignty and not committed to legislative form. Its exercise, moreover, which concededly has not occurred, would have no tenable concern in importing the League Island Navy Yard into the Commonwealth of Pennsylvania. It would exceed the sanction of the Act of Congress in legislating in any larger scope than the promulgation of Workmen's Compensation law in specific territory "outside of the Commonwealth", "as if said premises were under the exclusive

jurisdiction'' of the Commonwealth. If the Act of Congress were to be read as placing the League Island Navy Yard within the Commonwealth of Pennsylvania, the authority given in the Act would not be made available to the State ''as if'' this were the fact, which is a conventional expression of condition contrary to fact, and necessarily so in the circumstances.

It is submitted that a consideration of the act of 1936 as expressing Congressional intent to bring the Navy Yard within the Commonwealth of Pennsylvania, within the language of Section 1 of its Workmen's Compensation Law, takes leave of the sense of the Act. Discussion of the possibility is submitted here solely because of the issue shaped by the judgment of the Court below. Such a view of the Act of 1936 impresses it at the outset with violation of the 10th Amendment to the Constitution of the United States. ''The powers not delegated to the United States by the Constitution, nor prohibited by it to the states are reserved to the states respectively or to the people.'' No power has been delegated in any manner to the United States to enlarge the territorial limits of a state by ex parte Act of Congress. The assent of the state, whether it be expressed or implied, is none the less necessary. The grounds upon which such assent may be assumed, it is submitted, are not present in this instance. The sovereignty of the United States over the land in question was established through the appropriate formalities of an Act of the Pennsylvania legislature, ceding it to the United States on terms of purchase and by Act of Congress accepting the cession and the certification thereof by the Secretary of the Navy. The rights reserved by the Commonwealth were limited by the proviso at the conclusion of the supplemental act of cession, whereby it should not be construed ''to interfere with the service of civil or criminal process within

the premises hereinbefore mentioned." The procedure by which the status so created is susceptible of change, as between the Commonwealth and the federal government, has no different legal pattern because of distinction between an act of cession and an act of recession.

In *Fort Leavenworth R. R. Co.* v. *Lowe, supra,* where an act of cession of the State of Kansas to the United States was presumed to be accepted in the absence of dissent, the United States already owned and occupied the land as a military reservation and the cession merely augmented its proprietorship by grant of juridicial sovereignty.

In *Robbins* v. *United States,* 284 Fed. 39 (1922) the Circuit Court of Appeals for the 8th Circuit observed that acceptance by the United States of the cession of lands by the State of Colorado for purposes of Rocky Mountain National Park would be presumed. It was, nevertheless, the fact that Congress had established the Park by Act of 1915, added land to it by Act of 1917; established the National Park Service by Act of 1916, and that the Secretary of the Interior published regulations applicable to it in 1919.

In *Silas Mason Company* v. *Tax Commission,* 302 U. S. 186, 58 S. Ct. 233, this Court said: "Even if it were assumed that the state statute should be construed to apply to the federal acquisitions here involved, we should still be met by the contention of the Government that it was not compelled to accept, and has not accepted, a transfer of exclusive jurisdiction. As such a transfer rests upon a grant by the State, through consent or cession, it follows, in accordance with familiar principles applicable to grants, that the grant may be accepted or declined. Acceptance may be presumed in the absence of evidence of a contrary intent, but we know of no constitutional principle which compels acceptance by the United States of

an exclusive jurisdiction contrary to its own conception of its interests."

In this instance, a retrocession of the League Island Navy Yard to the Commonwealth of Pennsylvania would not attach itself to any subsisting nor inchoate interest in the Commonwealth upon which a presumption of any nature might be grounded. The principle of unqualified benefit, such as regulates the presumption of assent to the removal of jurisdictional impediment to the imposition of a local tax, is not recognizable here. As said by this Court in *James* v. *Dravo Contracting Co.*, 302 U. S. 134, 58 S. Ct. 208 (page 215):

> "As the Solicitor General has pointed out, a transfer of legislative jurisdiction carries with it not only benefits but obligations, and it may be highly desirable, in the interest both of the national government and of the state, that the latter should not be entirely ousted of its jurisdiction."

The principle of compulsory acceptance by the United States which this court was unable to discern in the case of *Silas Mason Co.* v. *Tax Commission, supra,* has no peculiar reason for existence with respect to the acceptance of obligations by the states.

It is submitted that the reasoning employed by the Circuit Court of Appeals, with respect to the abeyance of the Pennsylvania Workmen's Compensation Act, in awaiting an occasion for its exercise, and to the intention of the Pennsylvania legislature that this Act should be effective as against all to whom it could be applied, does not furnish the base of presumption of any character. Neither of these aspects of the law relaxes its express limitation to accidents occurring within the Commonwealth, nor does either bring the League Island Navy Yard within the Commonwealth. It is submitted that Congress is without power to do either of these things; that neither of them

has been done; and that the Pennsylvania Workmen's Compensation Act may become effective in the League Island Navy Yard by a legislative act of the Commonwealth designed to accomplish that result, and not otherwise.

The right of action asserted by the petitioners existed under the Common law of Pennsylvania at the time of cession of the territory in question to the United States, and continued to exist until changed by Statute. *James Stewart & Co.* v. *Sadrakula*, 309 U. S. 94, 60 S. Ct. 431. It has not been changed by applicable legislation and the denial of the right to petitioners in this case deprives them of property without due process of law. *Coombes* v. *Getz*, 285 U. S. 434, 52 S. Ct. 435.

The contention made by the respondent in the Court below with respect to the application of the extra territorial provisions of the Pennsylvania Workmen's Compensation Act has not been discussed in this brief for the reason that the Circuit Court excluded it from the grounds on which its decision was based.

The Court is asked to note that the payment of workmen's compensation by the employer's insurer does not bar an action of law against the tort-feasor. *Turner* v. *Robbins*, 276 Pa. 319.

Conclusion.

Wherefore, it is respectfully submitted that the decision of the Circuit Court of Appeals should be considered by the Court in the light of its opinion in *James* v. *Dravo Contracting Co.*, 302 U. S. 134; 58 S. Ct. 208, and *Silas Mason Co.* v. *Tax Com.*, 302 U. S. 186, 58 S. Ct. 233, and should be reversed.

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